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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,429	11/21/2005	Franz-Xaver Scherl	2002DE436	9065

25255 7590 01/24/2011  
CLARIANT CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
4000 MONROE ROAD  
CHARLOTTE, NC 28205

EXAMINER
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RICHTER, JOHANN R

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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01/24/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/533,429

Applicant(s)

SCHERL ET AL.

Examiner

KRISTIE L. BROOKS

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/18/05: 10/11/05</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I claims 1-10 and election of species in the reply filed on October 29, 2009 is acknowledged.
2. Claims 11-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 29, 2009.
- 3.

### ***Status of Application***

3. Claims 1-15 are pending.
4. Claims 1-10 are presented for examination below and claims 11-15 have been withdrawn from further consideration.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

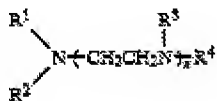
1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1,4-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh et al. (US 5,360,783).

Applicant claims a composition comprising at least one pesticide and at least one compound selected from formula (I).

### Determination of the scope and content of the prior art

(MPEP 2141.01)

Itoh et al. disclose a water-based pesticidal composition comprising a polyethylene polyamine, with the general formula



and a pesticide. Itoh et al. disclose the polyethylene polyamine with defined substituents (see column 2, lines 23-39). Itoh et al. further disclose the composition solves the problems of sedimentation, flocculation and gelation of

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the suspended or emulsified pesticidal particles (see column 1, lines 51-57 and 65-68). The pesticide content in the composition ranges from 10-60% by weight (see column 4 lines 3-19).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Itoh et al. teach a pesticidal composition comprising a pesticide and an alkoxyated amine containing an alkyl chain consisting of two methylene groups separating the amine groups (i.e. N-(CH<sub>2</sub>CH<sub>2</sub>N)) but do not teach an alkyl chain consisting of three methylene groups (i.e. N- (CH<sub>2</sub>CH<sub>2</sub>CH<sub>2</sub>N)).

**Finding of prima facie obviousness**

**Rational and Motivation (MPEP 2142-2143)**

However, one of ordinary skill in the art would have been motivated to make a composition comprising a pesticide and an alkoxyated amine with an alkyl chain consisting of three methylene groups separating the amine groups (i.e. N-(CH<sub>2</sub>CH<sub>2</sub>CH<sub>2</sub>N)) because Itoh et al. teach a pesticide composition comprising a pesticide and a very structurally similar alkoxyated amine that only differs from the instantly claimed compound of formula I by one methylene groups.

Thus, it would have been obvious to one of ordinary skill at the time of the invention to make a composition comprising a pesticide and an alkoxyated

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amine with an alkyl chain consisting of three methylene groups separating the amine groups (i.e. N-(CH<sub>2</sub>CH<sub>2</sub>CH<sub>2</sub>N)) because the instantly claimed compound of formula I and the compound taught by Itoh et al. are homologs (i.e. compounds differing regularly by the successive addition of the same chemical group, e.g., by -CH<sub>2</sub>- groups). One of ordinary skill in the art would make the instant compound since the compound is sufficiently close in structural similarity to the prior art compound and there is a presumed expectation that such compounds possess similar properties.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

7. Claims 2-3, 7, and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Ramsay et al. (US 6,750,178) in view of Itoh et al. (US 5,360,783).

Applicant claims a composition comprising at least one pesticide and at least one compound selected from formula (I).

### **Determination of the scope and content of the prior art**

#### **(MPEP 2141.01)**

Ramsay et al. disclose an agrochemical composition comprising an agrochemical active ingredient such as glyphosate and an adjuvant (see abstract). Ramsey et al. further disclose said glyphosate in the form of a salt

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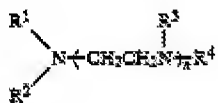
such as an ethanolamine, sodium and ammonium (column 5, lines 57-60).

Ramsey et al. disclose alkoxyated amines provide excellent activity enhancement when used in an agrochemical formulation and exhibit low toxicological profile (see column 1 lines 22-30). Ramsey et al. disclose the use of ammonium sulphate as an adjuvant and solid support when the active ingredient is glyphosate (instant claims 10-11 and 16) (column 6, lines 25-26). Ramsey et al. disclose a solid form that can be dispersed in liquid (column 6, lines 19 and 28-29) that contains the active ingredient from 20 to 90% and the proportion of adjuvant to agrochemical from 1:20 (see column 6, line 1 and 17).

**Ascertainment of the difference between the prior art and the claims**  
**(MPEP 2141.02)**

Ramsay et al. teach a composition comprising a pesticide such as glyphosate and an alkoxyated amine but do not teach the alkoxyated amine of formula I. This deficiency is cured by the teachings of Itoh et al.

Itoh et al. disclose a water-based pesticidal composition comprising a polyethylene polyamine, with the general formula



and a pesticide. Itoh et al. disclose the polyethylene polyamine with defined substituents (see column 2, lines 23-39). Itoh et al. further disclose the

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composition solves the problems of sedimentation, flocculation and gelation of the suspended or emulsified pesticidal particles (see column 1, lines 51-57 and 65-68). The pesticide content in the composition ranges from 10-60% by weight (see column 4 lines 3-19).

### **Finding of prima facie obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to incorporate the alkoxyated amine taught by Itoh et al. into the composition taught by Ramsay et al. because Ramsay et al. suggest that alkoxyated amines provide excellent activity enhancement when used in an agrochemical formulation and exhibit low toxicological profile. Further, Itoh et al. teach that a pesticidal composition comprising an alkoxyated amine solves the problems of sedimentation, flocculation and gelation of the suspended or emulsified pesticidal particles.

Thus, it would have been obvious to one of ordinary skill at the time of the invention to incorporate the alkoxyated amine taught by Itoh et al. into the composition taught by Ramsay et al. for the purpose of preparing a pesticidal composition with improved physical and chemical properties.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.



***Conclusion***

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616